

CTIA – The Wireless Association <sup>TM</sup>  
*Ex Parte* Presentation  
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Wireless Termination Tariffs  
Sprint Routing & Rating Petition

# OVERVIEW

- Two pending petitions before FCC seek clarification of interconnection rules of critical importance to wireless carriers.
  - T-Mobile-Nextel-Western Wireless petition seeks clarification that wireless termination tariffs unilaterally imposed by ILECs upon wireless carriers are unlawful.
  - Sprint petition seeks clarification that wireless carriers can designate separate rating and routing points for the exchange of local traffic under existing numbering and interconnection rules.

# UNILATERAL TARIFFS BYPASS FEDERAL INTERCONNECTION PROCESS

- Tariffs bypass federally prescribed interconnection requirements, thwart Congressional intent, are anti-competitive, and adversely affect consumers.
- Congress established detailed process involving negotiation/arbitration, state commission approval, FCC oversight, and federal judicial review. This process is “central” to 1996 Telecom Act and “not to be evaded by state rule-making.” *Verizon North I*, 309 F.3d 935, 941 (6<sup>th</sup> Cir. 2002).
- Tariffs thwart federal process by (1) removing incentives for rural LECs to negotiate in good faith and (2) permitting multiple state proceedings not subject to federal review.
- Under federal process, both rural LECs and wireless carriers have mutual incentives and obligations to negotiate for interconnection. Tariffs remove rural LEC incentives to negotiate in good faith and grant an unfair competitive advantage to rural LECs in the negotiations process.

# FEDERAL LAW PROHIBITS UNILATERAL INTERCONNECTION TARIFFS

- Sec. 332(c)(1)(B) gives FCC, not states, authority over CMRS-LEC interconnection, and Sec. 2(b) precludes state regulation of entry of and rates charged by CMRS carriers. *See Iowa Utilities Bd.*, 120 F.3d 753, 800 n.21(8<sup>th</sup> Cir. 1997) (upholding FCC's CMRS-LEC interconnection rules).
- Every federal appellate court addressing the issue has preempted tariffs filed in lieu of an interconnection agreement.
- In *Wisconsin Bell v. Bie*, Seventh Circuit preempted state tariffing requirement because it interfered with federally prescribed interconnection procedures. 340 F.3d 441 (7<sup>th</sup> Cir. 2003).
  - Facts: Wisconsin PUC ordered Wisconsin Bell to file interconnection tariffs, rather than conducting arbitrations. Wisconsin Bell challenged PUC order.
  - Court found that tariff process (1) “short-circuits negotiations,” even if it does not prevent negotiations entirely; and (2) permits state court review of interconnection rates, contrary to Congressional intent.

## FEDERAL LAW PROHIBITS UNILATERAL INTERCONNECTION TARIFFS (cont'd)

- In *Verizon North I*, Sixth Circuit preempted state tariffing requirement because it “provides an alternative route around the entire interconnection process.” 309 F.3d 935, 943 (6<sup>th</sup> Cir. 2002).
  - Facts: Michigan PSC required GTE/Verizon to file interconnection tariffs containing rates set by PSC. Verizon challenged PSC order.
  - Court noted a carrier “aggrieved by a state commission tariff decision might not be able to seek federal review.”
- In *Verizon North II*, Sixth Circuit preempted state commission order allowing CLEC to *voluntarily* file interconnection tariff requiring ILEC to pay tariffed rates. 367 F.3d 577 (6<sup>th</sup> Cir. 2004).
  - Facts: Michigan PSC allowed CLEC to collect tariffed charges from Verizon for termination of ISP-bound traffic. Verizon challenged PSC order.
  - Court found that state order permits state commission “to bypass the federal statutory process” and “eliminates all incentive to adhere to the federal statutory process.”

## FCC PRECEDENT AND POLICY PROHIBIT UNILATERAL WIRELESS TERMINATION TARIFFS

- FCC consistently has refused to allow ILECs to impose unilateral tariffs in lieu of interconnection agreements.
  - In *Virginia Arbitration Order*, Wireline Bureau rejected ILEC proposal in an arbitration proceeding that “would allow for tariffed rates to replace automatically the [interconnection] rates arbitrated.” 17 FCC Rcd 27039, ¶ 600 (WCB 2002).
  - Bureau reasoned that tariffed rates would not be subject to federal court review and would thwart statutory right to interconnection rates that comply with Secs. 251 & 252.
- Prior to 1996 Telecom Act, FCC found that ILEC interconnection obligations under Secs. 201 and 332(c) preclude ILECs from adopting unilateral tariffs before negotiating interconnection agreements with wireless carriers.

## RURAL LECs HAVE ALTERNATIVE OPTIONS FOR SEEKING TERMINATION COMPENSATION

- Rural LECs have legally enforceable right to demand good faith negotiations and a remedy if wireless carriers fail to comply.
- Wireless carriers are under mutual and reciprocal obligation to pay compensation to rural LECs for traffic termination pursuant to FCC rules.
  - Sec. 20.11(b)(2) of FCC rules states that a “commercial mobile radio service provider shall pay reasonable compensation to a local exchange carrier in connection with terminating traffic that originates on the facilities of the [CMRS] provider.”
- In adopting LEC-wireless interconnection rules, FCC “allowed LECs to negotiate the terms and conditions of interconnection with cellular carriers” and “required these negotiations to be conducted in good faith.” *Second CMRS Report and Order*, 9 FCC Rcd 1411, ¶ 229 (1994).
- Rural LECs that cannot reach agreement with wireless carriers may file complaint under Sec. 208 of the Act.

## **UNILATERAL TARIFFS IMPOSE ONEROUS RATES/TERMS THAT IMPEDE MARKET ENTRY AND VIOLATE FEDERAL REQUIREMENTS**

- Tariffs purport to require wireless carriers to provide detailed billing records/traffic reports that are inconsistent with industry standards. Conflicting tariff terms and conditions could easily inject chaos into wireless industry.
- Tariffs impose termination rates that are not TELRIC-based and thus are inconsistent with pricing standards under Sec. 252(d) of the Act.
- Tariffs impose transport obligations on wireless carriers in violation of Sec. 51.703(b) of FCC rules.
- Tariffs provide for one-sided payments only to rural LECs for traffic termination, in violation of Sec. 251(b)(5) of the Act.

# Sprint Routing & Rating Petition: Response to JSI (John Staurulakis, Inc.)

## **JSI's POSITION IS INCONSISTENT WITH HISTORIC PRACTICE**

- Since the inception of cellular industry 20+ years ago, CMRS has interconnected with PSTN using Type 2A interconnection:
  - With Type 2A, CMRS has direct connection to LATA tandem switches; and
  - CMRS immediately obtains indirect connection to all switches/networks subtending the tandem, include RLEC networks.
- Since the inception of cellular industry, CMRS has obtained telephone numbers in the locations where mobile customers primarily use their handset
  - Under FCC's numbering rules, CMRS can obtain numbers rated in any LEC rate center where they provide service
  - Thus, rating point is generally different than routing point
  - Industry guidelines recognize that rating and routing points can be different

**CMRS has interconnected indirectly with RLECs for over 20 years**

## JSI's POSITION IS INCONSISTENT WITH THE ACT

- Section 251(a) explicitly provides that carriers like CMRS and RLECs can connect “directly or indirectly.”
- JSI's position – only direct interconnection is permitted – is inconsistent with Section 251(a).
- JSI's reliance on Section 251(c)(2)(B) is misplaced. That provision is irrelevant to RLEC-CMRS interconnection:
  - Section 251(c) imposes “additional obligations” on ILECs;
  - Section 251(c)(2)(B) enables interconnection “within” an ILEC's network; and
  - In any event, most RLECs are not subject to Section 251(c) because of the Section 251(f)(1) “rural exemption.”

## JSI's POSITION IS INCONSISTENT WITH FCC RULES & ORDERS

- FCC has ruled that it is the competitive carrier (*i.e.*, CMRS), not the incumbent, that decides whether to interconnect directly or indirectly. *See, e.g., Virginia Arbitration Order*, 17 FCC Rcd 27039, 27085 (2002).
- FCC Rule 20.11(a) states that LECs “must provide the type of interconnection reasonably requested by a mobile service licensee” and further confirms that CMRS can interconnect indirectly.
- JSI's purported distinction between “type” and “method” of interconnection is unintelligible. If CMRS has a right to use Type 2A (access tandem) connection, it necessarily has the right to interconnect indirectly with subtending networks.

## JSI's POSITION MAKES NO ECONOMIC SENSE

- The RLEC trade association, NTCA, has recognized that the “most feasible and cost-effective option for most rural ILECs is to use the RBOC’s tandem for transiting functions”:

“Since all carriers in a service area or market must at some point connect to the area tandem, there is efficiency in utilizing the tandems to route calls to other carriers instead of building a direct connection to each carrier.” NTCA White Paper at 41 (March 10, 2004)
- The incremental RLEC cost to transport a call to a CMRS is minuscule
  - RLECs already have large trunk groups connecting their networks to the LATA tandems; and
  - Most CMRS do not charge RLECs for the Type 2A (tandem to MSC) facility.

## JSI's POSITION MAKES NO ECONOMIC SENSE

- Both CMRS and RLECs would face increased costs with a direct connection:
  - Traffic volumes are often not large enough to cost justify a direct connection.
  - With a direct connection, the POI would be at the RLEC's network, and RLEC would be obligated to compensate CMRS for this expensive transport for land-to-mobile (l-M) calls. *See* 47 C.F.R. 51.701(c).
- Changing the rules would require a huge waste of numbering resources—stranding numbers in rural LEC rate centers as multiple CMRS carriers are forced to obtain numbering resources (1000 blocks) in each rate center, even if they have only a hundred or fewer customers.

## JSI's POSITION WOULD BE COMPETITIVELY INEQUITABLE

- Today's rules are competitively neutral, as the originating carrier pays the cost of transporting its calls to the terminating carrier's network in the LATA:
  - For M-L calls, CMRS pays transport costs from MSC to RLEC end office switch; and
  - For L-M calls, RLEC pays transport costs from end office to MSC.
- JSI argues for a competitively inequitable arrangement:
  - CMRS pays 100 percent of transports (both M-L and L-M), while
  - RLEC pays nothing for transport.

**RLEC-CMRS competition cannot flourish if transport rules are not competitively neutral**